IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4254 OF 2006

Shri Prakash Babaso Shahapure,
and anr .. Petitioners
(Orig.Defts)

Vs

Shri Mallappa Aappanna Sanabe, .. Respondent
(Orig.Plff)

Mr S.S.Godbole i/b Mr P.M. Arjunwadkar, for the petitioners.
Mr A.M. Kulkarni, for the respondent.

CORAM : D.B.BHOSALE,J.
DATE : 26.09.2006

PC:

1. Heard the learned counsel for the parties.

2. This writ petition is directed against the concurrent findings recorded by the courts below on the application at Exhibit-5 filed by the respondent-plaintiff in Regular Civil Suit No.10 of 2005. Both the courts below, after having considered the entire material on record, have concurrently held that the petitioners-defendants have no right to lay pipeline through agricultural land of the respondent-plaintiff.

3. Mr Godbole, learned counsel for the petitioners, placed heavy reliance upon the orders passed by the

Tahasildar dated 18.12.2004 and 10.2.2006 in the proceedings under section 49 of the Maharashtra Land Revenue Code,1966, to contend that in the face of the orders, the petitioners-defendants have every right to lay the pipeline through the agricultural land of the respondent-plaintiff. He submitted that the revenue authority is empowered under that provision to pass such order allowing the petitioner to lay the pipeline to take water to irrigate his land from the source of water to which he is entitled.

4. It is true, under that provision if any person desires to construct a water course to take water to irrigate his land for the purpose of agriculture from a source of water to which he is entitled, including any source of water belonging to Government from which water is permitted to be taken, but such water course is to be constructed through any land which belongs to or is in possession of another person including neighbouring land owner, and if no agreement is to arrive at for such construction between the applicant and the neighbouring holder, the person desiring to construct the water course may make an application in the prescribed form to the Tahsildar. The Tahsidlar is, thus, empowered to grant such permission by following the mandate under

section 49 of the Maharashtra Land Revenue Code, 1966.

5. Insofar as the order dated 18.12.2004 passed by the Tahasildar under section 49 is concerned, admittedly the respondent-plaintiff was not a party and hence the said order is not binding on him. It appears that to overcome this difficulty the petitioners-defendants filed an application under section 49 exclusively against the respondent-plainitff on 15.7.2005 and that application was allowed by the order dated 10.2.2006. From perusal of the said order, it is clear that the application dated 15.7.2005 itself was filed after the ad-interim order was passed by the civil court on the application at Exhibit-5 and the order dated 10.2.2006 was passed after the ad-interim order passed on Exhibit-5 was confirmed on 7.5.2005. The Tahsildar in his order dated 10.2.2006 has, therefore, made it clear that the order passed under section 49 of the Maharashtra Land Revenue Code is enforceable only if the injunction granted by the civil court is vacated.

6. I perused the basic order dated 4.6.2004 passed by the Irrigation Department, granting permission to the petitioners-defendants allowing them to lay the pipeline subject to condition that if the land of the petitioners is covered under the command area of one Bubnal Sahakari

Pani Puravatha Yojana Maryadit, Bubnal, in that case, the permission (dated 4.6.2004) shall stand cancelled.

7. Admittedly, the Tahsildar while passing orders under section 49 of the Land Revenue Code, had taken the order dated 4.6.2004 into account. My attention was invited to the order passed by this Court in Writ Petition No.185 of 2005. The writ petition was filed by Bubnal Sahakari Pani Puravatha Yojana Maryadit. In that writ petition, the Division Bench of this Court, by order dated 22.12.2005, had directed the Irrigation Department to fix the command area of the said irrigation society based on the revenue record. It appears that in pursuance of the order passed by this court, the Command Area of the said society was fixed by the concerned office. I perused the report annexed to the affidavit in reply filed by the respondent which clearly demonstrates that the lands of the petitioners-defendants fall within the command area of Bubnal Sahakari Pani Puravatha Yojana Maryadit. I am informed by Mr. Kulkarni, learned counsel for the respondent, that for making the report of the concerned officer final, necessary agreement has also been executed. He further submitted that in view of the report of the concerned officer of the Irrigation Department the basic permission dated 4.6.2004 was

cancelled by order dated 20.5.2005. Mr Godbole, learned counsel for the petitioners, in reply thereto invited my attention to the order dated 4.6.2005 by which the order dated 20.5.2005 cancelling the permission came to be stayed. I perused the said order. It is true that the stay was granted to protect the then standing crop of the petitioners. However, it is not clear whether the enquiry referred to in the letter dated 4.6.2005 has been conducted or not. However, the fact remains that the lands of the petitioners fall within the command area of the aforesaid society and, therefore, as stated in the basic permission dated 4.6.2004, the petitioners are not entitled for such permission. In the circumstances, the findings recorded by the courts below cannot be termed as perverse, as submitted by Mr Godbole, learned counsel for the petitioners, warranting interference by this court under Article 227 of the Constitution of India. I find that the discretion has been exercised by the trial Court reasonably and judicially. The writ petition is accordingly dismissed.

8. Keeping in view the facts and circumstances of the case, the trial Court shall decide the suit as expeditiously as possible and preferably within a period of six months from the date of receipt of this order. It shall be open for the parties to approach the

concerned revenue irrigation authority for expediting the enquiry, mentioned in the order dated 4.6.2005.

(D.B.BHOSALE,J.)